

Draft Minutes
Delta Protection Commission Meeting
Thursday, July 26, 2001

*NOTE: These draft minutes cover only a portion of the meeting
Complete draft minutes will be mailed for the September meeting.*

1. Call to Order.

The meeting was called to order at 6:30 p.m. by Chairman Patrick N. McCarty. Commissioners present were: Bedford, Brean, Cabaldon, Coglianese, Curry, Curtis, Gleason, Glover, Macaulay, McGowan, Nottoli, Sanders, Shaffer, Thomson, Van loben sels, Wilson, and Ex-Officio Member Helen Thomson. Commissioners absent were: Calone and Ferguson.

2. Public Comment Period for Items not on the Agenda. There were no public comments.

3. Minutes of Last Meeting.

Commissioner Cabaldon requested a correction: He was not absent at the May 24th meeting; he was awaiting reappointment by SACOG. On a motion by Commissioner Sanders and a second by Commissioner Coglianese, the draft minutes were approved unanimously by voice vote, as amended. Commissioners Bedford, Cabaldon, Glover, Macaulay, McGowan, Nottoli and Thomson abstained.

4. Chairman's Report.

Chairman McCarty announced the next DPC meeting is scheduled for September 27, 2001. The Commission is tentatively scheduled to discuss CALFED's ecosystem restoration plan in the Delta and their draft implementation strategy for the Delta as well as review the scoping document for preparation of a Delta Master Recreation Plan. He announced the corrected date for the Ag Subcommittee is August 7th; the notice incorrectly stated August 2. Chairman McCarty attended the CALFED Policy Group meeting on June 14th; and reported that progress is being made on all fronts.

5. Commissioner Comments/Announcements.

Commissioner Coglianese commented that in regard to the CALFED meeting of June 14th, one of the items on the agenda was CALFED Science Center Complex, which includes a complex at UC Davis and a field station in the City of Rio Vista. Concurrence was recently received to move forward with the planning of the project from representatives of both the Secretary of the Interior and the Governor's Office.

Commissioner Curtis stated that the Department of Fish and Game (DFG) has proposals for land acquisitions within the Delta coming up at the Wildlife Conservation Board (WCB) meeting scheduled for August 30th.

Commissioner Curtis stated (as copies were passed out) that there are two separate purchases: The Wilcox Ranch acquisition in Solano County and Yolo Bypass acquisition. All lands are part of the Glide Ranch. He said it is difficult for DFG to discuss acquisitions while deals are being negotiated. He said the negotiations have just been completed.

Commissioner Curtis stated the Wilcox Ranch is about 3,300 acres, near Travis Air Field, west of Jepson Prairie Preserve. It is a purchase primarily to protect vernal pools. The deal is still being put together, but the idea is that DFG would buy the land; an open space easement would go to Solano County or the Nature Conservancy and the Ranch would be maintained in grazing for at least five years.

Commissioner Shafer asked what is the anticipated environmental documentation for the acquisitions; Commissioner Curtis replied that WCB acquisitions are 'categorically exempt' under CEQA; Commissioner Shaffer asked if was a Section 13 exemption; Commissioner Curtis did not know what section of CEQA.

Commissioner Van Loben Sels asked if there is an existing conservation easement on this particular piece of property; Commissioner Curtis was unaware of an existing easement.

Commissioner Van Loben Sels asked the source of the funding and the approximate price per acre; Commissioner Curtis said the source of funds is Prop 12, and the overall average for both properties is about \$1500/acre. He offered to get additional information and distribute it prior to the August 30 WCB meeting.

Ms. Aramburu is unsure if the Wilcox project is within the Legal Delta; it adjoins the vernal pool area in the Jepson Prairie Preserve which is partially in the Primary Zone. She will check and report back.

Commissioner Wilson asked if there was any funding for a management plan; Commissioner Curtis said management will either be through the Nature Conservancy or Solano County Open Space Foundation.

Commissioner Coglianese noted that until recently she was a board member of the Solano County Farm Lands and Open Space Foundation which acquired the Jepson Prairie Preserve from the Nature Conservancy. As a condition of acquisition, a management plan was required which does include grazing. The Foundation also does do management on some DFG property in the Calhoun Cut area. She said the logical thing would be to extend the same kind of management.

Commissioner Curtis described new second acquisition in the Yolo Bypass. DFG owns and manages the 3700 acre Yolo Bypass Wildlife Area (Vic Fazio Yolo Basin Wildlife

Area). The property being acquired consists of three ranches: the Causeway, Geiberson, and Tule Ranches.

The Causeway Ranch will virtually double the size of DF&G wildlife area. The acquisition of this northern most piece will make it easier to operate the existing wildlife area. There is a piece north of the railroad, approximately 180 acres, that DFG would reserve the right to sell it as it's harder to manage.

The Geiberson Ranch, approximately 160 acres, 30 acres of which are within the Yolo Bypass levee, the other 130 acres are outside the levee. This is a potential site for a Pacific Flyway Center. However, currently access is difficult because it is through private land and PG&E and if access isn't available, DFG may sell the portion outside the levee.

The Tule Ranch, approximately 9,000 acres, would require additional funds for management. The Department would like to develop wildlife friendly agricultural practices that are compatible with the wildlife area. Some areas are primarily grazing lands. Again, DFG added options to sell land if it doesn't fit into their operations or management plan.

Commissioner Van Loben Sels asked if the ranches are within the Yolo Bypass; Commissioner Curtis replied yes, they are largely within the Bypass.

Commissioner Van Loben Sels asked if all these properties studied as part of the proposed North Delta National Wildlife Refuge; Commissioner Curtis replied affirmatively.

Ms. Aramburu stated that the piece to north of the wildlife area was not in the study as part of the proposed refuge.

Commissioner Shaffer stated that the Yolo Basin Foundation received CALFED funds and are currently studying management issues associated with the Yolo Bypass. He asked how does the timing work in terms of this versus completion of the study first; Commissioner Curtis stated he is unsure of the timing; but that the Yolo Basin Foundation is very supportive of this acquisition.

Commissioner Wilson asked how this effects flood control and flood elevations; Commissioner Curtis said that anything purchased within the Yolo Bypass has to meet Reclamation Board standards. Managing the wildlife area is subject to rules of operation and maintenance rules. The acquisition will be reviewed by WCB on August 30. The north piece can quickly be managed as part of the existing wildlife area and will include agriculture, as well as recreation and educational activities. The southern piece, the Tule Ranch, will probably be operated primarily as wildlife friendly agriculture. He said he would like income generated from agriculture to be part of funding for management of the wildlife area. Currently, DFG requires any revenues from refuges to go to a general department fund.

Commissioner Shaffer asked if DFG has analyzed cost effectiveness of acquisition versus developing tools and incentives for the existing private land owners to develop and manage land in wildlife friendly agriculture and habitat. He asked if there will be a fiscal impact to Yolo County; Commissioner Curtis responded that at times the State uses conservation easements. However, in this situation the landowner wants to sell and then be a tenant of DFG. Commissioner Curtis said DFG is the only State agency that pays a fee in lieu of taxes for land classified as wildlife area. DFG pays a fee at the same level as the private land owners paid when they sell land. The counties look at this as a decrease because normally when a property sells, it's assessed at a higher value. Also, there's no opportunity for the in lieu fee to be increased over time. In addition, payment of the fees is subject to funding by the Legislature and those funds are not always available.

Commissioner Shaffer expressed concern that DFG is using a categorical exemption for acquisition of existing habitat or enhancement of existing habitat, which is different from acquisition of currently farmed land that may stay in farming and some that will be converted to habitat.

Commissioner Wilson described a DFG-funded habitat project on Tyler Island that has not been completed, and is creating a nuisance to nearby farmers. He asked if any Reclamation Districts would be affected by the proposed acquisition; Commissioner Curtis did not know if any Reclamation Districts would be affected.

Commissioner Van Loben Sels suggested that DFG incorporate into this transaction a mechanism that preserves the tax base for this 12,000 acres; Commissioner Curtis responded that the DFG follows the formula created by the Legislature.

Chairman McCarty acknowledged that the Commission is becoming increasingly familiar with the Tyler Island situation, and that's probably a good one to examine as to what goes wrong and what should be mitigated against or planned for to prevent future problems. He suggested development of a guide book to prevent future similar occurrences.

Commissioner McGowan stated that the Commission needs to start looking at how we get our arms around these kinds of issues as they arise. This feeds into what our fundamental question was about our role with the CALFED process. Where's the coordination? Where's the Commission's role in helping to determine whether or not all of this is really where it ought to be.

Commissioner Shaffer asked if it would be appropriate for Dan Siegel to review the categorical exemption and provide an interpretation for the Commission; Mr. Siegel responded it may be quicker to get an opinion from the DFA attorneys or other department in-house attorneys.

Commissioner McGowan said the fundamental policy question is whether or not this body feels this is an issue for the Commission or not. If the Commission feels it's

important, then the Commission needs to get the appropriate information, and the Commission needs to feel comfortable about what's going on.

Commissioner Sanders agreed this is an important issue.

Chairman McCarty said the question is basic; the Commission must go back to what land use is compatible with our vision and plan and if a land use is proposed, are we going to say yes it's compatible and it's acceptable in the Primary Zone or no it's not. We have to stop finding out about these things after they've been acquired so that we can comment on them and perhaps suggest that the funds that are being allocated would be utilized somewhere else for a different type of project within our sphere of influence.

Commissioner Coglianesi said the question on CEQA is just what tool do you use to get at the issue. The suggestion earlier to look at Tyler Island as a case study and analyze what went wrong, then advocate for policies if in fact agencies are going to be acquiring land within our jurisdictional area, then one of the conditions for DPC's agreement. DPC's standard comment should be unless they mitigate the concerns raised by Tyler Island, including having a management plan within a certain time after or before acquisition, then we're not in favor of the acquisition

Commissioner Cabaldon said when the federal North Delta National Wildlife Refuge was proposed, at least in Yolo County, it seemed quick at the time the process was proceeding and how quickly the DPC and local governments in the area had to respond. He said we have a lot less time here and these are our own State agencies. The whole point of this Commission is to be a forum where precisely these types of issues get raised by DFG and the County and the rest of the interested parties. He said the U.S. Fish and Wildlife Service seems to take a more inclusive approach with the Commission and with the Delta stakeholders then with one of our own stakeholder departments within the Commission. He urged the Chairman or the Executive Director to communicate with the various departments that make up this Commission that this is a partnership and has the potential to be a very useful forum to avoid those kinds of battles if the Commission gets notice of more than a week or two of an action being taken.

Commissioner Curtis said he agrees. The DFG has expressed interest in this property for a number of years. There has been a Conceptual Area Acquisition Plan that was heard publicly before WCB. The problem here is that you can't talk about a deal when its under negotiations. However, maybe discussions of general areas, general concepts, management systems, that kind of thing can be done.

Chairman McCarty said he's never seen a piece of property bought without a list of conditions being imposed before the sale can be consummated. One of those conditions could be approval by a number of different organizations, including the Delta Protection Commission when it falls within the Primary Zone.

Commissioner McGowan said there are a number of local concerns that each jurisdiction has, whether it's a reclamation district, local county, city, it's not that hard to put those

important philosophical and policy positions in place and no deal should be going through unless it passes the test for all those local considerations.

Commissioner Curtis said DFG is willing to work on a process and make it succeed.

Commission McGowan said Yolo County is preparing an HCP and this purchase limits areas the County can use for its mitigation areas. This is an issue that the County and DFG should be working together.

Assemblywoman Thomson asked whether purchases such as this would qualify as mitigation and is there some way to work that out. It is interesting that with this amount of land and the County is looking for that amount of land, why those can't mesh.

Commissioner Curtis said DFG can't use State funds to buy lands to provide mitigation so private property can develop, that's illegal. However, under the HCP concept, you need not worry about acre for acre mitigation. This land could be considered a portion of the preserve; certainly it can't meet all the mitigation needs. However, we can develop the amount of land that's needed for endangered species so the amount of land that is needed to be put in the preserve is reduced. He hoped the County and DFG could pursue these ideas further.

Commissioner Cabaldon said that's exactly what the DFG should be doing. The counties and cities, can't go out and buy habitat and then write a conservation plan after lands are required. He said plans and acquisitions should be laid out in advance so we don't end up in this situation.

Commissioner Wilson asked if this acquisition was in the Primary Zone, Ms. Aramburu said yes. She said that unless the action is postponed, WCB would be acting before the Commission's next regular meeting in September.

Commissioner Wilson commented that in essence a CALFED participant and a government agency will acquire 14,000 acres with no environmental review and no official review by the DPC; Ms. Aramburu said the acquisition is subject to CEQA, but that the attorneys for WCB have determined it's categorically exempt.

Mr. Siegel said this is not an action item at this meeting. In order to initiate the process, it needs to be agendaized at the next DPC meeting. Chairman McCarty asked Ms. Aramburu to agendaize this question for the next meeting.

Commissioner Coglianese asked if the question could be broader than just the CEQA question. We've talked about some terrific policy questions and we'd like to continue this discussion and perhaps the Chair would ultimately decide to form a subcommittee or an ad hoc committee. We may end up needing to develop a policy that we then present to all these agencies as the way we want to do business with them, even though they may not be legally required to do that way.

Commissioner Notolli asked Counsel and Executive Director to study any mechanism for DPC participation in the WCB process, and to pursue if possible.

Chairman McCarty suggested that he and Ms. Aramburu and Mr. Siegel can discuss this at another time and determine if there is an avenue to pursue.

Commissioner Curry inquired when there could be another meeting. Ms. Aramburu said she would confirm WCB's meeting date on the 30th of August, and if that's the case the DPC could have a meeting on the fourth Thursday in August.

6. Attorney General's Report.

Dan Seigel, Attorney General's Office, said that the United States Supreme Court recently decided to review the question of whether an interim moratorium on development in which no development of certain lands could take place while, in this case, a regional plan for Lake Tahoe was developed. It requires a payment of what's called Just Compensation. The case will probably be heard in January and a decision will probably come out around June of next year and he will report back and provide more details at that time.

7. Executive Director's Report.

Ms. Aramburu said that due to the length of the Yolo Bypass discussion, her report will be condensed. She said at the May meeting, a question was asked concerning imported dirt on agricultural land that the Commission asked her to research and report back. The particular project was located near Commissioner Van Loben Sels' property in the North Delta in Sacramento County. She drafted a letter to Supervisor Nottoli who forward the letter to his public works staff. The landowner in question told County staff that intended to import dirt to raise the elevation of a portion of his land in order to grow crops; this is consistent with County codes. However, the County Agriculture Commissioner's office said this is highly unusual. Because an issue was raised about the quality of the imported dirt, staff researched the source of the dirt. The dirt is from a former industrial site that is being developed for a new water tank. The Delta landowner was a subcontractor on the construction site. County staff is still waiting for the results of tests of the dirt and will let me know when research has been completed. All dirt that is to be moved, has been moved

She noted that the Commissioners received material on the workshop to be held tomorrow on Regional Board about the agriculture discharges. A preliminary position by staff is that they probably won't do anything about it. Any additional action at this time would be a huge regulatory challenge for them and they don't have funding, plus there's a built in system for review of those waivers under new law that's been put into place. She passed around the interim report that the comprehensive study has did which does have a map in it showing which portions of the Delta are in the study area and which are out.

Chairman McCarty asked if there were any questions on the Executive Director report.

Commissioner Nottoli asked about the Sacramento County project list; the Borrow Site relative to the Flood Control Agency proposed project which was before SAFCO last week, the draft environmental document. His question was whether both the DPC and the Citizens Advisory had received copies. She said yes. This is the exportation of about five or six feet over that portion of land there, what is being called the Camay site. Ms. Aramburu commented that because what they are going to do is lift off the top soil, excavate for the earth and the fill and then put the top soil back. They are making a concerted effort to protect the integrity of the agricultural value soil. Commissioner Nottoli commented that he knows as with the Sacramento Board, Supervisors spend a lot of time and we'll get a chance to hear it again with the Aqua Farm Ski Lake proposal as it comes back through the process, but was the ground water and where it sat and the impacts of excavation. In this case, they're going to retain the soil but the proposal as I understood was to take five or six feet of soil, some 360,000 cubic yards and I don't know where the ground water is in that location and what the impacts of that are, but we have plenty of debate before the board so I assume that will be looked at in an environmental analysis, but because of some of the concerns that come before this

Commission as well as before the County of Sacramento, I thought it would be an alert to this group as well as others as it comes through the hearing process.

Ms. Aramburu said if anyone is interested in assisting the DPC to refine the agriculture conversion table, we would appreciate it. We've done the second version and Lori Clamuru has outlined some questions and this is partially feed back that we got from the local counties when we went out and talked to them about what we really want reflected, land under cultivation or land associated with agriculture. We spoke to Supervisor Thomson and his staff about the idea of all aspects of agriculture are protected, including support facilities, shipping facilities, processing facilities, and do we want to count those as agriculture or make sub-unit which is Ag support versus tilled land. She asked the Commissioners to contact the DPC office if they have any comments and/or suggestions about clarifying the categories in that analysis.

8. Consideration and Possible Adoption of Positions on Pending Legislation.

Chairman McCarty said the Commission will review and possibly adopt positions of support on pending State legislation regarding matters associated with the Commission's legislative mandate and adopted Land Use and Resource Management Plan for the Primary Zone of the Delta. He called on Commissioner Gleason, Co-Chair of the Legislative Subcommittee, to brief the Commission.

Commissioner Gleason presented an overview of the legislative schedule for the year. Specifically, members will return from summer recess August 20. Upon return, they will act on the hundreds of bills remaining on file until Interim Study Recess begins September 14. The Delta Protection Commission has been following 25 bills this year. Of these, only five are eligible to be sent to the Governor for action this year. The remaining are 'two-year' bills and will not be act upon until after the Legislature reconvenes in January 2002. He said the subcommittee, Commissioners Gleason and Coglianesse, have looked at four bills that could be sent to Governor this year and one that may be sent to the Secretary of State. The measures were summarized in the Commissioner's packets.

Commissioner Gleason noted that AB 7, (Cardoza) Sales and use taxes: farm equipment and machinery. This bill, as well as several other rural tax bills, were recently amended into SB 347, Johannessen, and then again into AB 426, Cardoza, which is before the Governor. The bill has a provision that states existing law authorizes cities and counties to be reimbursed for revenue losses caused by the enactment of sales and use tax exemptions. So local agencies aren't hurt and that was one concern that Co-Chair Coglianesse and I had since were local agencies because we're contract cities, we get most of our revenue from sales tax. It is our recommendation that the Commission support this bill.

Commissioner Gleason made a motion to support AB 426, Cardoza. Commissioner Coglianesse seconded the motion. Motion was carried unanimously.

Commissioner Gleason discussed AB 801, Salinas, the Choose California Act, would basically require State institutions to buy California agriculture products before those that are grown outside the State. Our recommendation is to support this bill.

Ms. Morais noted that this bill was not currently before the Governor and will be heard in Senate Appropriations Committee when they return from recess on August 20. Therefore, there is time to send a letter if the Commission votes to support this bill.

Chairman McCarty noted that the bill requires public and state agencies that are procuring food products to buy California first and its addressed to schools and institutions. The biggest purchaser of these kind of goods are the school districts.

Commissioner Coglianese stated that although she supports the bill, she would like to ask Commissioner Shaffer since DF&A has primary responsibility under the bill for administering the paper work, what is the position of your department? Commissioner Shaffer was not aware of an official position. Ms. Morais stated that she had contacted the DF&A legislative Liaison; they have been following the actions of the bill, however, have no approved position. The bill would require some unknown costs as related to the reporting requirements. They didn't have a cost estimate at the time, however, didn't think it would necessarily place a hardship on the department.

Chairman McCarty called for any questions and a motion. Commissioner Gleason made a motion. Commissioner Brean--- commented that he has concern for one state agency to report to another; the job grows without any additional product for the State agencies that are the victim of that sort of legislation. Commissioner Helen Thomson commented that at one time it was part of the trailer bills. Ms. Morais commented it was not currently a trailer bill and it too, is scheduled to be heard August 20, in Senate Appropriations Committee.

Chairman McCarty called for the vote. The ayes carried the motion; Commissioners representing State departments abstained.

Commissioner Gleason said AB 1414 would require DFG to prepare land management plans and DPR to prepare general plans, for specified properties, which describe goals and strategies for managing the land and would identify and describe both ongoing and any necessary restoration, rehabilitation, and improvement projects for the land. Our subcommittee supports this bill; there are thousands of acres of publicly-owned land in the Delta that should be evaluated for use that would carry out goals of enhanced ecosystem health in the Delta. This bill would support that needed evaluation. There has been no registered opposition.

Ms. Morais said this bill is scheduled to be heard in Senate Appropriations on August 20. The departments within the Resources Agency do not have an approved position on the bill, however, they do have concerns due to unknown, perhaps major costs.

Chairman McCarty said that perhaps this is an opportunity to work with the authors and determine a way to attach specific items that may come as a result of discussions among the Commissioners; policy matters on land acquisitions in the Delta. Sounds like there's a lot of overlap and before supporting it one way or the other, perhaps we should weigh in and register some of our policy considerations.

Commissioner Coglianese said she doesn't think the Commission should delay; this at least takes the State part of the way and if we don't meet in August, basically we lose the opportunity to weigh in one way or the other.

Commissioner Curtis commented DFG has no position, however, originally the Department discussed had come concerns that they communicated to the author. The bill has been amended since then to lease DFG's concerns and certainly sees some value in having something like this done.

Assemblywoman Thomson said this bill took great deal of time in the Assembly committee, Water Parks and Wildlife. The bill was the result of a State Auditor report on how the State manages its land acquisition programs. She agreed with Commissioner Wilson's comments that Tyler Island may be an example. The author did acquire many co-authors. She is not advocating for the bill, however, not supporting the bill doesn't further the DPC's goals.

Commissioner Brean said DPR has no position on this bill, however, the Department has 267 park units, and a great percentage of those do not yet have general plans as required by law. The back load is huge; it takes in excess of 18 months to do a typical general plan at a cost in excess of \$100,000. Although the concept is wonderful, the bill didn't discuss those concerns originally. Assemblywoman Thomson commented that the bill was amended to prevent the State from acquiring any additional land until the provisions of AB 1414 are completed.

Commissioner Gleason made a motion to support the bill. Commissioner Coglianese seconded the motion.

Chairman McCarty called for the vote. The ayes carried the motion; Commissioners representing State departments abstained.

Commissioner Gleason presented AB 1667 (Dickerson) regarding State agencies' real property. Existing law requires the Department of General Services to maintain a complete and accurate statewide inventory of all real property held by the State and requires each State agency to furnish the departments with specified information, including, among other things, the location of the property and a description of its current uses and projected used during the next three year. It would also require state agencies to furnish a description of the type of site the property is, including, but not limited to, agricultural, wildlife habitat, historical, ecosystem restoration, and sites where the state retains the right to control the development and or its use.

Additionally, the Resources Agency would be required to collect and disseminate information about proposed land acquisitions by state government, and an annual report would be required that details the land acquisition priorities of state government on a geographical, but not parcel specific, basis. He said the subcommittee recommends support.

Chairman McCarty asked if there was any discussion.

Commissioner Cabablon said the summary states there would be minor cost to cities and counties to provide written notification to DFA & Department of Conservation. What is required of cities and counties under this legislation? Commissioner Brean said there were a lot of opportunities for local government to purchase land from state funds, such as grants from DPR for park property. There may be a requirement that those lands may have to be included within this bill. Ms. Morais said it is estimated that there would be minor local government costs; less than \$75,000/annually statewide, to provide written notifications to the Departments. The costs are reimbursable.

Commissioner Gleason made a motion to support the bill. Commissioner Coglianese seconded the motion.

Chairman McCarty called for the vote. The ayes carried the motion; Commissioners representing State departments abstained

Commissioner Gleason presented the last measure, ACA 8 (Keeley) would create the California Water and Land Protection Trust Fund in the State Treasury.